MT LEGISLATIVE HISTORY

Chapter 295 1975

Bill H _____ S 92 Original bill & hist. — C

H. Committee on Natural Resources		S. Committee on Agriculture, Livestock + Irrigation	
Hearing Date(s) Mar 08	✓ C	Hearing Date(s) Jan 24	✓ C
_____	___ C	Jan 29	✓ C
_____	___ C	_____	___ C
_____	___ C	_____	___ C
Date Out _____	___ C	Jan 27	✓ C

Did this bill originate in an interim committee? ___ Yes ___ No

Committee _____ Report _____

Note: No minutes regarding final House Committee action were found

Senate BILL NO. 92

INTRODUCED BY Thiessen Lockrem Himsl Turnage

A BILL FOR AN ACT ENTITLED: "AN ACT TO REVISE AND MODERNIZE STATUTES GOVERNING THE STATE LAW LIBRARY; REMOVING THE STATE AUDITOR AND SECRETARY OF STATE FROM THE BOARD OF TRUSTEES; BROADENING THE AUTHORITY OF THE LIBRARIAN; AMENDING SECTIONS 44-402 AND 44-405, R.C.M. 1947; AND REPEALING SECTIONS 44-404, 44-408, 44-409, AND 44-410, R.C.M. 1947."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 44-402, R.C.M. 1947, is amended to read as follows:

"44-402. Location -- board of trustees. The state law library of the state of Montana shall be located in the capitol building at Helena, Montana, and shall be in the immediate custody and subject to the control of a board of seven--~~(7)~~ trustees, consisting of the chief justice and the ~~associate~~ justices of the supreme court of the state of Montana~~--the--secretary-of-state-and-the-state-auditor. The members-of-the-board-shall-serve--as--such--members--without compensation--and--their--terms--shall-be-identical-with-the term-of-office-of-the--chief--justice--and--of--the--several associate-justices-from-time-to-time.~~"

Section 2. Section 44-405, R.C.M. 1947, is amended to read as follows:

"44-405. ~~Duties--of--librarian--regulations~~ Rules for use of library. ~~It-shall-be-the-duty-of-the-librarian,~~

~~(1)--to--be--in-attendance-at-the-library-during-office hours,~~

~~(2)--to-purchase,-under-the-direction-of-the--board--of trustees,--all--compilations--of--statutory-laws,-reports-of decisions-of-courts-of-last-resort-or-intermediate--courts, in--the-several-states-of-the-union,-the-national-reporters' series,--and--all--encyclopedias,--digests,--textbooks---and miscellaneous--books,--maps,-charts,-legal-periodicals-and-a complete-collection-of-all-of-the-laws-of-the--territory--of Montana,--the--state--of--Montana,--furniture,-fixtures,-and supplies,~~

~~(3)--to--number---and---stamp---all---books,---digests, encyclopedias,--printed--works,--maps,--papers-and-pamphlets belonging-to-the--library,--for--their--ready--and--accurate identification--and--to-keep-a-complete-catalogue-thereof-in accordance--with--catalogue---systems---approved---for---law libraries,~~

~~(4)--to--have--well--and--properly-bound-all-books,-and also,-all-pamphlets-and-papers-when-directed-thereto-by--the trustees,~~

~~(5)--to--keep--a--register--of--all--books-and-property belonging-to-the-library,-the-additions-made-each-year,--and~~

INTRODUCED BILL

~~the cost thereof.~~

~~(6) to keep a register of all books or other property taken from the library under the authority of the trustees.~~

~~(7) to establish and maintain a system of domestic and foreign exchange of books, maps, or other publications which are properly the subject of collections for a state law library, and to obtain from the secretary of state and other state departments, boards, bureaus, commissions and agencies upon request, such numbers of all state publications as may be needed to supply the demands of the system established.~~

~~(8)~~(1) The state law library shall be maintained and operated for the use of the members of the supreme court, the members of the ~~legislative assembly while in session as such~~ legislatures, and the several officers of the senate and of the house of representatives, for state officers and employees, for members of the bar of the supreme court of Montana, for members of the bar of supreme courts of other states while in attendance before the supreme court of Montana, and members of the general public agreeing to the rules ~~and regulations~~ established ~~by the board of trustees and enforced~~ by the librarian.

(2) The librarian shall develop and maintain an adequate collection and services to fulfill the needs of library users and shall establish procedures for the maintenance and control of the collection. ~~All persons,~~

~~during library hours, are permitted to examine the library and its contents and to work within the library quarters. During sessions of the legislative assembly, the members thereof may take books from the library, and state officials may do so at any time. Law books may be taken from the library to a courtroom by any attorney at law and must be returned to the library before five (5) o'clock P.M. of the same day. No book or other work that cannot be readily replaced in case of loss shall be removed from the state law library except by state officials, and by them only in pursuit of their official duties and subject to recall by the librarian on arrangements made by the borrower with the librarian.~~

~~Books taken by members of the legislative assembly must be returned at the close of the session, and before the state auditor draws his warrant in favor of any member of the legislative assembly for his last week's salary, he must be satisfied that such member has returned all books taken by him and paid for any injuries thereto.~~

~~The state auditor, if notified by the librarian that any officer has failed to return books taken by him within the time prescribed by the rules, and after demand made, must not draw his warrant for the salary of such officer until the return is made, or three (3) times the value of the books, or of any injuries thereto, has been paid to the~~

~~librarian.~~"

Section 3. Repealer. Sections 44-404, 44-408, 44-409, and 44-410, R.C.M. 1947, are repealed.

-End-

SENATE COMMITTEE

ON

AGRICULTURE, LIVESTOCK, AND IRRIGATION

Minutes January 24, 1975

The meeting of the Agriculture, Livestock and Irrigation Committee was called to order by Chairman Carroll Graham on the above date in Room 415 of the State Capitol Building.

ROLL CALL: All members were present.

The following witnesses were present to testify:

Craig Winterburn - Rancher
Bob Tully - Northern Plains Resource Council
Steve Gunderson - Montana Farmers Union
Ed Grady - Montana Farm Bureau
Patrick Sweeney - Northern Plains Resource Council
Wallace Edland
Mons Teigen - Montana Stockgrowers Association
Representative Willie Day
Senator Richard Colberg
Mike Plecitt - Democratic Party
Randy Wriggs - Farmer - Rancher
Jack Chapman - Ranch Realtor
Norman C. Wheeler - Wheeler and Associates
Tom Winsor - Montana Chamber of Commerce

CONSIDERATION OF SENATE BILL 92:

Senator Colberg who introduced this bill stated that the bill provides that if a coal company damages a ranchers water supply it is up to the company to prove that they did not damage the water. It shifts the burden of proof to the company. He had two letters of support, one from the Montana Farm Bureau and one from the Montana Farmers Union, copies of which are attached. (exhibit 1 and exhibit 2).

Representative Willie Day from Dawson County said there are 200,000 acres of coal in that county and he was concerned about the ground water and urged the passage of the bill.

Mr. Bob Tully from Musselshell County representing the Northern Plains Research Council stated that there is ample evidence to prove that ground water is being damaged. In many instances no amount of money can compensate for the loss of this water. This bill would transfer the burden of proof to the damager and this would rectify what seems to be a bad law.

Mr. Pat Sweeney also representing the Northern Plains Research Council spoke next. He pointed out several instances where ground water is being damaged. The water level in some places has dropped from ten to fifty feet. He stated it might be desirable to have the company drill a new well instead of giving a monetary payment.

Mons Teigen, Montana Stockgrowers Association said that they support this bill with the amendment the Farm Bureau had proposed, see exhibit 1). He said they were in favor of developing land and are in favor of mining, but felt the land should be reclaimed. He felt this bill would be a step in the right direction.

At this time there was an open discussion with members of the committee asking questions. The matter of surface water was brought up and why it had not been mentioned. The existing law on strip mining covers surface water.

CONSIDERATION OF SENATE BILL 74:

Senator Jergeson said this is the Montana Family Farm Act. He said it is essentially the same bill that was introduced last session with the amendments that the senate committee had adopted. He passed out a copy of the amendments he had proposed. A copy of these are attached. This bill will prevent vertical integration of the agricultural industry. He then went through the bill by section.

Wallace Edland, from Daniels County, representing himself appeared in support of this bill. He said the main purpose of the bill is to insure that agricultural land will be controlled by farmers and ranchers in Montana. He read a report that had been entered into the congressional record delivered by Professor Richard Rodefeld, see exhibit 3). He urged the committee to give a Do Pass to the bill.

Steve Gunderson spoke next representing the Montana Farmers Union. He was standing in for Clyde Jarvis who could not be present today. (exhibit 4).

Mr. Mike Plecett, from the Democratic Party, said they were in support of this bill. This would provide for the continuation of the family farm. In Montana, agriculture is a social and productive way of life and is not used as a tax write-off.

Next the opponents of the bill were heard from.

Ed Grady representing the Montana Farm Bureau testified next. A copy of his testimony is attached, exhibit 5.

Craig Winterburn, rancher, spoke next. He felt that this bill would not do what it is intended to do. He said if an entity with considerable asse[illegible] wants to buy land that they would find a vehicle in which to do so. He said as far as

ROLL CALL

AGRICULTURE, LIVESTOCK & IRRIGA. COMMITTEE

44th LEGISLATIVE ASSEMBLY 1975 Date 1-24

NAME	PRESENT	ABSENT	EXCUSED
SENATOR BOYLAN - Vice Chair.	X		
SENATOR ABER	X		
SENATOR CONOVER	X		
SENATOR FOSTER	X		
SENATOR GALT	X		
SENATOR JERGESON	X		
SENATOR KOLSTAD	X		
SENATOR MANLEY	X		
SENATOR MURPHY	X		
SENATOR NELSON	X		
SENATOR GRAHAM - Chairman	X		
SENATOR McOMBER - Ex Officio	X		

Each day attach to minutes

Exhibit 1

MONTANA FARM BUREAU FEDERATION

P.O. BOX 1207 - 125 WEST MENDENHALL BOZEMAN, MONTANA 59715

Dial 587-3153

January 23, 1975

Stanley C. Burger

Executive Vice President

Everett Snortland

Executive Legislative Director

Senator Richard Colberg
State Capitol Building
Helena, Mt 59601

Dear Senator:

Pursuant to our conversation outside of the Senate Chambers on January 22, 1975, we are submitting to you an amendment to Senate Bill 92 which, we believe, will help in administering the bill. You will note that we have asked for you to give consideration to replacing the words "30 days" on page 3, line 15, to read "a reasonable length of time". It is our opinion that it will take more than 30 days for the defendant (operator) to acquire a water supply in some instances. Therefore, we think that the term "a reasonable length of time" will help them to find other sources.

We wish to also advise you of our support of Senate Bill 92 since the Montana Farm Bureau Federation is for the purpose of saving Montana's water for agricultural purposes. We believe that there is danger of destroying a producer's water supply through the process of strip mining. We also wish to give as much of a benefit of a doubt to the defendant (operator) as possible. We would hope that in interpreting the term "a reasonable length of time" the Department will give consideration as to the time of year in some instances which, of course, could be crucial to the agricultural producer.

If you need any further evidence of our support, please feel free to contact me or Ev Snortland at your convenience.

Sincerely,

Stanley C. Burger
Executive Vice-President

SCB/ldl
Enclosure

AMENDMENT TO SENATE BILL 92

PAGE 3

Line 15. Strike after the word "within" and insert the following: "a reasonable length of time".

LEAGUE OF WOMEN VOTERS

44th Session
January 1975

SB 92 - An act to amend section 50-1055, R.C.M. 1947 to define prima facie evidence of injury to an owner's water supply in a designated ground water area and to shift burden to strip mine operator in a nondesignated area.

In keeping with the League's policy on water quality, we fully support SB 92 which would shift the burden of proof from the plaintiff (landowner) to the defendant (strip mine operator) in an action for damage to a landowner's water supply. We feel this is necessary for the following reasons:

1. Water quality and quantity is more likely to be maintained if the strip mine operator knows it is faced with the burden of disproving plaintiff's allegations of damage.

2. The strip mine operator will be encouraged to take greater care to protect water quality and quantity if it knows, before going into an area, that if it destroys or degrades the water supply it will have to provide an alternative source of water to the landowner or risk losing its permit to operate.

3. By shifting the burden of proof from the landowner to the operator, the amendment simplifies and strengthens the landowners remedy in an area in which the source of damage is notoriously difficult to establish.

We urge passage of SB 92.

Exhibit 2

TESTIMONY BEFORE THE AGRICULTURE, LIVESTOCK AND IRRIGATION COMMITTEE, MONTANA STATE SENATE, HEARING ON SENATE BILL 92, FRIDAY, JAN. 24, 1975.

I am Clyde Jarvis, president of the Montana Farmers Union, a statewide farm and ranch organization of approximately 8,000 family members, with headquarters in Great Falls.

In testimony before various committees of the Legislature in the last several sessions on matters related to coal development, I have stressed that just as vital as agriculture is to the Montana economy, so is water vital to agriculture.

But, the amount of water available also happens to be a critical factor in coal development.

By way of warning, I have emphasized that clean water from underground sources is a must for livestock operations, and, of course, for domestic use.

What happens if an agricultural operator's or a community's water supply is diverted?

The underground water supply in an area with limited annual rainfall is all-important!

If water tables are lowered, stock water supplies are destroyed or require deeper drilling as wells go dry.

Who is responsible? Who will pay for deeper drilling for a farmer or rancher who may be located some distance from the actual mining operation? Who will replace the water from a destroyed underground supply

One piece of legislation can't possibly answer all of agriculture's questions and fears about water, but certainly Senate Bill 92 is a sorely needed safeguard, and it has our strong support.

Thank you for hearing me out, and for considering agriculture's viewpoint.

###

SENATE COMMITTEE

ON

AGRICULTURE, LIVESTOCK AND IRRIGATION

Minutes

January 27, 1975

The meeting of the Agriculture, Livestock and Irrigation Committee was called to order by Chairman Carroll Graham on the above date in Room 415 of the State Capitol Building.

ROLL CALL: All members were present.

CONSIDERATION OF SENATE BILL 92:

Senator Graham stated that there had been a proposed amendment suggested by the Farm Bureau. On page 3, line 15, they would like to have the "thirty days" changed to "a reasonable length of time".

Senator Manley suggested that temporary water be replaced immediately with permanent water to be replaced in a reasonable length of time.

Senator Galt suggested amending page 3, at the end of line 14 by adding "immediately on a temporary basis to provide the needed water and within a reasonable time replace the water".

Senator Kolstad made a motion that this amendment be passed. Seconded by Senator Conover. Motion carried unanimously.

Senator Aber asked if there was a need to put something in the bill about the renter or leaser of the land. Senator Manley felt that this should be agreed on between the owner of the land and the renter.

Senator Aber moved that the word "renter" be inserted after the word "owner" on page 1, line 6, page 2, line 13 and on page 3, line 4, after the words "water rights" insert the word "renter". After more discussion it was agreed that the word "renter" was not needed in the bill. Senator Aber withdrew his motion.

DISPOSITION OF SENATE BILL 92:

Senator Manley moved that Senate Bill 92 DO PASS AS AMENDED. Seconded by Senator Conover. Motion carried unanimously.

CONSIDERATION OF SENATE BILL 65:

Senator Jergeson said he had heard that there were other bills pertaining to this subject to be introduced and felt these should be looked into.

Senator Aber moved that the committee hold this bill to see what the other bills on this subject are like. Seconded

ROLL CALL

AGRICULTURE, LIVESTOCK & IRRIGA. COMMITTEE

44th LEGISLATIVE ASSEMBLY 1975 Date 1-27-75

NAME	PRESENT	ABSENT	EXCUSED
SENATOR BOYLAN - Vice Chair.	X		
SENATOR ABER	X		
SENATOR CONOVER	X		
SENATOR FOSTER	X		
SENATOR GALT	X		
SENATOR JERGESON	X		
SENATOR KOLSTAD	X		
SENATOR MANLEY	X		
SENATOR MURPHY	X		
SENATOR NELSON	X		
SENATOR GRAHAM - Chairman	X		

Each day attach to minutes

March 8, 1975

The Natural Resources Committee met on March 8, 1975, at 10:30 a.m. in room 437 with Chairman Bradley presiding for a hearing on the following bills. Absent were Reps. Fishbaugh, Jack Moore, Jim Moore, and Schye.

SB 92 SENATOR COLBERG, the chief sponsor, stated this was to protect the rancher who lives next to a strip mining operation. It would require the strip mine operator, if he disturbed the aquifer that supplied that rancher's ground water, to see that his supply was replaced. He said it shifts the burden of proof from the rancher to the operator. He read a letter from the Montana Farm Bureau Federation supporting the bill and a copy of this letter is exhibit 1.

CLYDE JARVIS, Montana Farmers' Union, was the next proponent speaker and a copy of his testimony is exhibit 2.

Senator Colberg stated the Northern Plains Resource Council was unable to have a representative at the meeting but wished to go on record as favoring the bill and a copy of their written testimony is exhibit 3.

C. C. McCALL, State Lands, stated they are in support of the bill, but have a few administrative changes they would like to suggest. These are written into a copy of the bill, exhibit 4. Among the changes is to extend the time from 30 days to 180 days--he said this is more realistic--and to have monitoring wells installed by the operator to check on water quantity and quality.

During questions Rep. Quilici asked Senator Colberg if he agreed with the amendments offered by State Lands. Senator Colberg said he had just seen them that morning, but he was sure that State Lands just wanted to make the bill work and with that he would have no question.

SJR 25 SENATOR COLBERG, the chief sponsor, read the title which states this resolution is to encourage the release of impounded forest service funds, and to encourage the federal government to properly manage their forests. He said this resolution could carry some impact as he had been informed that the impounded funds were about to be released and this could be the straw that broke the camel's back. He said if the forests were properly managed it would mean 1000 more jobs and just the releasing of the impounded funds would make 84 jobs available.

ROBERT HELDING, St. Regis Paper Co., stated they support the bill. He said it was imperative that the small woodland owner be helped in proper forest management. He said the federal government underfunds their forests.

Rep. Colberg in his closing statement said a lot of the forest land is in private hands and the federal government should be encouraged to go to the small woodlot owner and help him through showing him how to be a better manager.

SB 338 SENATOR ROBERTS, the chief sponsor, stated this bill would give the Department of Natural Resources the authority to act as a

Ex. 1

MONTANA FARM BUREAU FEDERATION

P.O. BOX 1207 - 125 WEST MENDENHALL BOZEMAN, MONTANA 59715
Dial 587-3153

March 7, 1975

Stanley C. Burger
Executive Vice President

Everett Snortland
Executive Legislative Director

Senator Richard Colberg
Senate Chambers
State Capitol Building
Helena, Mt 59601

Dear Senator Colberg:

We are sorry that we will be unable to be at the hearing of the House Natural Resources Committee on SB 92 Saturday morning, March 8, 1975. We did want to, however, impart to you and members of the House Natural Resources Committee that we support SB 92. As you know, the Montana Farm Bureau Federation feels strongly about protecting water for agriculture. It is our opinion, that SB 92 would do so in a reasonable manner.

If we can be of any further assistance in supporting SB 92 in its present form, please feel free to contact us at your convenience.

Sincerely,

Stanley C. Burger
Executive Vice-President

Everett Snortland
Executive Legislative Director

SCB:ldl

cc: 17 copies to Members of the House Natural Resources Committee

EX. 2

TESTIMONY BEFORE THE NATURAL RESOURCES COMMITTEE, MONTANA HOUSE OF REPRESENTATIVES, HEARING ON SENATE BILL 92, SATURDAY, MARCH 8, 1975.

I am Clyde Jarvis, president of the Montana Farmers Union, a statewide farm and ranch organization of approximately 8,000 family members, with headquarters in Great Falls.

In testimony before various committees of the Legislature in the last several sessions on matters related to coal development, I have stressed that just as vital as agriculture is to the Montana economy, so is water vital to agriculture.

But, the amount of water available also happens to be a critical factor in coal development.

By way of warning, I have emphasized that clean water from underground sources is a must for livestock operations, and, of course, for domestic use.

What happens if an agricultural operator's or a community's water supply is diverted?

The underground water supply in an area with limited annual rainfall is all-important!

If water tables are lowered, stock water supplies are destroyed or require deeper drilling as wells go dry.

Who is responsible? Who will pay for deeper drilling for a farmer or rancher who may be located some distance from the actual mining operation? Who will replace the water from a destroyed underground supply

One piece of legislation can't possibly answer all of agriculture's questions and fears about water, but certainly Senate Bill 92 is a sorely needed safeguard, and it has our strong support.

Thank you for hearing me out, and for considering agriculture's viewpoint.

###

Ex. 2

NORTHERN PLAINS RESOURCE COUNCIL

421 STAPLETON BUILDING
BILLINGS, MONTANA 59101

March 6, 1975

Representative Dorthy Bradley
House Natural Resources Committee
State Capitol
Helena, Montana 59601

Dear Representative Bradley:

Northern Plains Resource Council wishes to be on record with the House Natural Resources Committee in support of SB 92.

It will come as no great shock to many to say that strip mining may have a tremendous effect on the groundwater resources of this state. Already in certain areas groundwater problems can be seen. At Colstrip mining has caused the loss of certain wells and springs to ranchers bordering the permit areas. At Decker groundwater studies indicate a substantial drop in the watertable level around the mined area and on associated lands. The Strip Mining and Reclamation Act of 1973 should protect the legitimate property rights of ranchers bordering strip mines.

SB 92 was drafted to provide two (2) important remedies for landowners whose groundwater may be adversely affected by coal strip mining:

(1) SB 92 shifts the burden of proof for damage to groundwater from the landowner to the company. This is an extremely important shift because under the present law the landowner with his limited legal resources must sue the company with conciderable corporate resources and it is incumbent upon the landowner to prove damage. SB 92 shifts this burden of proof to the company.

(2) SB 92 also establishes an administrative procedure for the landowner who is adversely affected to recoup in quantity and quality the loss of water from the company, if it is determined that his loss was from strip mining. This addition is also critical. Suing for damages is often a lengthy time consuming process, especially for a rancher who may be relying on certain springs and wells for his domestic or stock use. Requiring a company to re-drill wells is a much more immediate and often more desirabl means than simply requiring a payment for damages. Often the loss of an important spring or well can not be replaced in the strick monetary sense if it leaves portions of the ranching unit unproductive because of the lack of water. In some cases both an in-kind-payment of the replaced water and a monetary payment might be necessary. This might be particularily true for the loss of a spring that had to be replaced by a well. The well requires maintainence and labor to keep operating and this time and expense should be reimbursed.

Northern Plains Resource Council urges you to report favorably on SB 92 and insure the protection of the water rights of our agricultural people who live near strip mining.

Patrick Sweeney

Patrick Sweeney/ NPRC Staff

SENATE BILL NO. 92

INTRODUCED BY COLBERG

A BILL FOR AN ACT ENTITLED: "AN ACT TO AMEND SECTION 50-1055, R.C.M. 1947, TO DEFINE PRIMA FACIE EVIDENCE OF INJURY TO AN OWNER'S WATER SUPPLY IN A DESIGNATED GROUND WATER AREA AND TO SHIFT BURDEN TO STRIP MINE OPERATOR IN A NONDESIGNATED AREA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 50-1055, R.C.M. 1947, is amended to read as follows:

"50-1055. Mandamus to compel enforcement of law -- action for damage to water supply -- damage from surface water -- other remedies. (1) A resident of this state, with knowledge that a requirement of this act or a rule adopted under this act, is not being enforced by a public officer or employee whose duty it is to enforce the requirement or rule may bring the failure to enforce to the attention of the public officer or employee by a written statement under oath that shall state the specific facts of the failure to enforce the requirement or rule. Knowingly making false statements or charges in the affidavit subjects the affiant to penalties prescribed under the law of perjury.

(2) If the public officer or employee neglects or refuses for an unreasonable time after receipt of the statement to enforce the requirement or rule, the resident may bring an action of mandamus in the district court of the first judicial district of this state, in and for the county of Lewis and Clark, or in the district court of the county in which the land is located. The court, if it finds that a requirement of this act or a rule adopted under this act, is not being enforced shall order the public officer or employee, whose duty it is to enforce the requirement or rule, to perform his duties. If he fails to do so, the public officer or employee shall be held in contempt of court and is subject to the penalties provided by law.

(3) An owner of an interest in real property who obtains all or part of his supply of water for domestic, agricultural, industrial, or other legitimate use from an underground source other than a subterranean stream having a permanent, distinct, and known channel, may sue an operator to recover damages for contamination, diminution, or interruption of the water supply, proximately resulting from strip mining.

(a) Prima facie evidence of injury in a suit under this subsection is established by the removal of coal from a designated "ground water area" as prescribed in Title 99, chapter 29. If the area is not a designated "ground water area", a showing that the coal is an aquifer in that

THIRD READING

geographical location and that the coal or the overlying strata has been removed or disrupted shifts the burden to defendant (operator) to show that plaintiff's (owner's) water supply was not injured thereby.

(b) An owner of water rights adversely affected may file a complaint, detailing the loss in quality and quantity of his water, with the department. Upon receipt of this complaint the department shall:

(i) investigate the complaint using all available information including monitoring data gathered at the mine site;

(ii) require the defendant (operator) to install such monitoring wells or other practices that may be needed to determine the cause of water loss, if there is a loss, in terms of quantity or quality;

(iii) ~~(ii)~~ issue, within ~~thirty~~ 180 days, a written finding specifying the cause of the water loss, if there is a loss, in terms of quantity or quality;

(iv) ~~(iii)~~ order the mining operator, IN COMPLIANCE WITH THE WATER USE ACT to replace the water IMMEDIATELY ON A TEMPORARY BASIS TO PROVIDE THE NEEDED WATER AND WITHIN A REASONABLE TIME REPLACE THE WATER in like quality, quantity, and duration, ~~within thirty days~~ if the loss is caused by the surface coal mining operation; and

(v) ~~(iv)~~ order the suspension of the operator's permit, for failure to replace the water, until such time as the operator provides substitute water.

(4) A servient tract of land is not bound to receive surface water contaminated by strip mining on a dominant tract of land, and the owner of the servient tract may sue an operator to recover the damages proximately resulting

from the natural drainage from the dominant tract of surface waters contaminated by strip mining on the dominant tract.

(5) This section does not create, modify, or affect any right, liability, or remedy other than as expressly provided in this section."

-End-

SENATE BILL NO. 92

INTRODUCED BY COLBERG

A BILL FOR AN ACT ENTITLED: "AN ACT TO AMEND SECTION 50-1055, R.C.M. 1947, TO DEFINE PRIMA FACIE EVIDENCE OF INJURY TO AN OWNER'S WATER SUPPLY IN A DESIGNATED GROUND WATER AREA AND TO SHIFT BURDEN TO STRIP MINE OPERATOR IN A NONDESIGNATED AREA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 50-1055, R.C.M. 1947, is amended to read as follows:

"50-1055. Mandamus to compel enforcement of law -- action for damage to water supply -- damage from surface water -- other remedies. (1) A resident of this state, with knowledge that a requirement of this act or a rule adopted under this act, is not being enforced by a public officer or employee whose duty it is to enforce the requirement or rule may bring the failure to enforce to the attention of the public officer or employee by a written statement under oath that shall state the specific facts of the failure to enforce the requirement or rule. Knowingly making false statements or charges in the affidavit subjects the affiant to penalties prescribed under the law of perjury.

(2) If the public officer or employee neglects or refuses for an unreasonable time after receipt of the statement to enforce the requirement or rule, the resident may bring an action of mandamus in the district court of the first judicial district of this state, in and for the county of Lewis and Clark, or in the district court of the county in which the land is located. The court, if it finds that a requirement of this act or a rule adopted under this act, is not being enforced shall order the public officer or employee, whose duty it is to enforce the requirement or rule, to perform his duties. If he fails to do so, the public officer or employee shall be held in contempt of court and is subject to the penalties provided by law.

(3) An owner of an interest in real property who obtains all or part of his supply of water for domestic, agricultural, industrial, or other legitimate use from an underground source other than a subterranean stream having a permanent, distinct, and known channel, may sue an operator to recover damages for contamination, diminution, or interruption of the water supply, proximately resulting from strip mining.

(a) Prima facie evidence of injury in a suit under this subsection is established by the removal of coal OR DISRUPTION OF OVERLYING AQUIFER from a designated "ground water ~~area~~ AREAS" as prescribed in Title 89, chapter 29. If the area is not a designated "ground water area", a showing

that the coal OR OVERLYING STRATA is an aquifer in that geographical location and that the coal OR THE OVERLYING STRATA has been removed OR DISRUPTED shifts the burden to defendant (operator) to show that plaintiff's (owner's) water supply was not injured thereby.

(b) An owner of water rights adversely affected may file a complaint, detailing the loss in quality and quantity of his water, with the department. Upon receipt of this complaint the department shall:

(i) investigate the complaint using all available information including monitoring data gathered at the mine site;

(II) REQUIRE THE DEFENDANT (OPERATOR) TO INSTALL SUCH MONITORING WELLS OR OTHER PRACTICES THAT MAY BE NEEDED TO DETERMINE THE CAUSE OF WATER LOSS, IF THERE IS A LOSS, IN TERMS OF QUANTITY OR QUALITY;

~~(ii)~~ (III) issue, within ~~thirty~~ NINETY (90) days, a written finding specifying the cause of the water loss, if there is a loss, in terms of quantity or quality;

~~(iii)~~ (IV) order the mining operator IN COMPLIANCE WITH THE WATER USE ACT to replace the water, IMMEDIATELY ON A TEMPORARY BASIS TO PROVIDE THE NEEDED WATER AND WITHIN A REASONABLE TIME REPLACE THE WATER in like quality, quantity, and duration, ~~within thirty days~~ if the loss is caused by the surface coal mining operation; and

~~(iv)~~ (V) order the suspension of the operator's permit, for failure to replace the water, until such time as the operator provides substitute water.

(4) A servient tract of land is not bound to receive surface water contaminated by strip mining on a dominant tract of land, and the owner of the servient tract may sue an operator to recover the damages proximately resulting from the natural drainage from the dominant tract of surface waters contaminated by strip mining on the dominant tract.

(5) This section does not create, modify, or affect any right, liability, or remedy other than as expressly provided in this section."

-End-